THE HONOURABLE SRI JUSTICE T.CH.SURYA RAO
AND
THE HONOURABLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION NO.16158 of 2006

DATED: 23-08-2006

BETWEEN:

Mrs. Kaza Madhavi, W/o. Sri Kaja Srinivasa Rao
And two others ... Petitioners

And

Y.S. Vivekananda Reddy,
S/o. Sri Y.S. Raja Reddy ... Respondents

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AND
THE HONOURABLE SRI JUSTICE G. CHANDRAIAH

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ORDER: (per TCSR,J)

The instant writ petition is directed against the order dated 14-07-2006 passed by the learned Special Court under A.P. Land Grabbing Prohibition Act in I.A.No.20 of 2006 in L.G.C.No.2 of 2006.

The petitioners in I.A.No.20 of 2006 before the Special Court are the petitioners herein. They filed the main L.G.C.No.2 of 2006 against the respondents for recovery of the land alleging *inter alia* that the respondents committed an act of land grabbing. In the concomitant application filed in I.A.No.20 of 2006 they sought for an interim injunction restraining the respondents from changing the nature of the schedule property. Initially the Court directed both parties to maintain status quo. Under the impugned order, after having heard either side, the learned Special Court directed the respondents to file an undertaking to the effect that they shall not insist upon any equity in their favour and deliver possession of the application schedule

property to the petitioners in the event of their success ultimately in L.G.C.No.2 of 2006 and consequently vacated the *status quo* order granted earlier in the application. It is that order now being assailed in the instant writ petition.

The petitioners' case was that the father of the first petitioner by name K. Kesava Rao purchased the property in dispute in the year 1984 from one Syed Ali Moosa Raza, Tara Begum and Syed Ale Hasan by means of a registered sale deed and the said property was gifted to her by her father towards pasupu kumkuma at the time of her marriage and pursuant to that gift, she has been in possession and enjoyment of the said property in her own right. The second petitioner is the mother of the first petitioner and third petitioner is her brother, i.e., the wife and son of the said Kesava Rao, who died later. On account of internal disputes, the first petitioner filed suit in O.S.No.718/1990 against petitioners 2 and 3 for declaration of her title and that suit was decreed in the year 1991. One Sardar Balwant Singh forcibly and illegally encroached upon an extent of 3500 sq. yards of site belonging to the original owners by name, Syed Ali Moosa Raza and others on the premise that he obtained a sale deed dated 25-10-1965 from one Agamaiah, who was working as a watchman under the original owners. Out of the said extent of 3500 sq. yards of site, Balwant Singh sold 2125 sq. yards to one Sardar Prahalad Singh under sale deed dated 24-12-1965.

It is the further case of the petitioners that the original owners by means of two registered sale deeds dated 06-04-1984 under document Nos.845/84 and 846/84 sold the land in an extent of 1704 sq. yards in two portions to K. Kesava Rao, the father of the first petitioner, in an extent of 762 sq. yards and also in an extent of 915 sq. yards to one Shobhanadri. At that time, on account of mistake in the sale, the eastern boundary was shown as western boundary and the western boundary was shown as eastern boundary. Without any manner of right whatsoever, Balwanth Singh and the purchasers from

Balwanth Singh grabbed the property on the western side. When there was an attempt to grab the property, all the petitioners filed a suit in O.S.No.1686/96 against respondent No.5 for perpetual injunction. However, that suit was dismissed for default. In the meanwhile, respondents 4 to 8 sold the property in favour of respondents 1 to 3 under document No. 3419/2005. Pursuant to which, the respondents grabbed the property of the petitioners and have been making attempts to take up the construction.

The case of the respondents seems to be that the decree in O.S.No.718/90 is a collusive one in between the petitioners. The property was originally owned by one Agaiah, who validly conveyed the same in favour of Balwanth Singh for a valid consideration. The disputed property is a part of the land covered by S.No.129/55 in an extent of Ac.3.26 guntas. Balwanth Singh purchased a part of the land from Agaiah and acquired the remaining extent of 14,020 square yards through a registered sale deed dated 27-07-1966 from the legal heirs of late Agaiah. Thus, the entire extent of Ac.3.26 guntas of land was purchased by the said Balwanth Singh and he was in absolute possession and enjoyment of the same. He in turn, sold a part of it in an extent of 2125 square yards to Prahlad Singh and Balwanth Singh himself was in possession of the remaining extent of the land. The sale deeds covering an extent of 1704 sq. yards of land in favour of Kesava Rao and Shobhanadri do not confer any title on them and they were never in possession of the same. The boundaries mentioned therein are wrong and they were not in existence. The petitioners filed a suit in O.S.No.1686/96 on the file of the I Additional Judge, City Civil Court, Hyderabad against the 5th respondent herein for perpetual injunction and allowed the suit to be dismissed for default. Even the vendors of Kesava Rao and Shobhanadri by name Syed Ali Moosa Raza and two others filed O.S.No.4474/80 on the file of the XIV Asst. Judge, City Civil Court, Hyderabad in respect of 1700 sq. yards of site against Sardar Balwanth Singh and Prahlad Singh for perpetual

injunction. I.A. No.1584/80 in O.S. 4474/80 was filed seeking temporary injunction, but that application after hearing both the parties was dismissed. The appeal preferred therein against that order eventually ended in dismissal. Even the suit in O.S.No.4474/80 was dismissed on 01-01-1995. As Balwanth Singh was in possession of the entire extent openly, the title if any of the petitioners was extinguished by virtue of adverse possession by Balwanth Singh and his successors in interest who have been in possession continuously beyond the statutory period.

Having regard to the competing claims and as could be seen from the report filed by the Deputy Director, Survey and Land Records, Hyderabad as Commissioner, who stated *inter alia* in his report that the sale deed of the respondents squarely covers the land in dispute and the boundaries mentioned in the sale deed of the petitioners are not tallying with that of the application schedule land, eventually, the learned Special Court was of the considered view that it was expedient to direct the respondents to file an undertaking as aforesaid.

While the writ petitioners claim that the property originally belonged to one Syed Ali Moosa Raza and two others, the respondents claimed that originally it belonged to one Agaiah. According to the petitioners, Agaiah was no other than the Watchman under those petitioners. The petitioners claimed to have purchased a part of the land by the father of the first petitioner by means of a registered sale deed from the original owners in the year 1984 whereas respondents claimed that Balwanth Singh purchased the land under two different registered sale deeds from Agaiah and after his death from his legal representatives, in the years 1965 and 1966. Admittedly, the original owners filed a suit in O.S. 3706/84 against Balwanth Singh, Prahlad Singh and others for recovery of possession in respect of a part of the land covered by S.No.129/55. Doubtless that the subject matter of that suit is different and distinct from the subject matter of the instant land grabbing case but it is a part of the total

extent claimed by the plaintiffs in that suit. That suit was eventually decreed in favour of the plaintiffs and against Balwanth Singh, Prahlad Singh and others. The judgment passed by the trial Court attained finality when the proceedings filed in hierarchy of courts questioning the judgment and decree passed by the trial court, eventually ended in dismissal. Having regard to the said judgment and decree where under the title of Syed Ali Moosa Raza was decided by competent Civil Court, it is the contention of the learned counsel for the petitioners that it is not open to the respondents to contend that Agaiah was the original owner and Balwanth Singh and Prahland Singh validly purchased the property through the said Agaiah under two sale deeds in the year 1965 and 1966 and it cannot confer any valid title to them. Indeed that is precisely the crux of the matter to be decided by the learned Special Court in the land grabbing case pending before it. Although the sale deed executed by Syed Ali Moosa Raza and others in favour of late Kesava Rao was not in respect of the property covered by the said suit, but certainly it is in respect of a part of the property covered by S.No.129/55, which is an extent of Ac.3.26 guntas. When in respect of the part of the said land covered by S.No.129/55, Syed Ali Moosa Raza was held to be the owner by a competent civil Court, it is the contention of the learned counsel that the judgment can be pressed into service as

a valid piece of document to show that in respect of the land in dispute, the said Syed Ali Moosa Raza was the original owner, but not Agaiah, their Watchman, and the sale deeds of the year 1984 where under late Kesava Rao purchased the property shall have to be preferred qua the sale deed under which the respondents purchased recently the property from Prahlad Singh. These contentions again shall have to be adverted to and adjudicated by the learned Special Court. There appears prima facie some case in that view of the matter in favour of the petitioners.

Learned counsel for the petitioner represents that the learned

Special Court has fallen into an error in construing the report of the Deputy Director, Survey and Land Records, Hyderabad. According to the learned counsel for the petitioners that the eastern and western boundaries mentioned in the sale deed executed in favour of late Kesava Rao were wrongly mentioned and the mistake was crept in on account of the fact that Syed Ali Moosa Raza and others sold the property in two parts by means of two different sale deeds, one in favour of Kesava Rao and the other in favour of one Shobhanadri and at that time, while mentioning the eastern and western boundaries in those two documents. Indeed the report of the commissioner is also the same. *Inter alia*, in his report, the learned Commissioner found that the eastern and western boundaries have been wrongly noted down in the sale deeds, as could be seen on physical verification. It is the specific case of the petitioners that eastern and western boundaries have been wrongly mentioned in the sale deed as could be seen from the affidavit filed in support of the petition itself, and the report of the Commissioner vindicates the case of the petitioner. Anyway, all these things shall have to be decided by the learned Special Court, this court is not sitting on appeal over the orders passed by the learned Special Court. As regards the prima facie case and the findings of the Commissioner given in his report, *inter alia*, with due respect there appears some misconception on the part of the learned Special Court and in that view an error has been crept in.

Under these circumstances, it is the contention of the learned counsel for the petitioners that it is not expedient in the interest of both the parties to allow the respondents to go ahead with the construction, instead, it will subserve the interest of both the parties to proceed with the enquiry in the Land Grabbing Case and see that the case is disposed of as expeditiously as possible within a short period. We are of the considered view that there is some force in the contention of the learned counsel. Having regard to the factual matrix as stated hereinabove, instead of allowing the parties to go ahead with the

construction by incurring a sizable expenditure, it would subserve the interest of both the parties, if the main case is disposed of within a period of six months. So that, if the respondents succeed in their attempt they can proceed with the construction validly even without giving any undertaking and without any risk whatsoever. If the petitioner succeeds, there is every risk of; the construction now being allowed to be made; getting demolished, since vacant possession shall have to be delivered to the petitioners, in which event, it will be a colossal waste of money. In our considered view, this would subserve the interest of both the parties. Therefore, the impugned orders shall have to be set aside by allowing the status quo to be continued till the disposal of the main Land Grabbing Case within a period of six months from the date of receipt of a copy of this order and the parties shall cooperate with the Court for such disposal.

For the above reasons, the writ petition is allowed. In the light of the observations made *inter alia* in this order, the order now being impugned is set aside. We direct both the parties to bear respective costs.

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T.CH. SURYA RAO, J.

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G. CHANDRAIAH, J.

Dated: 23..08..2006.

Note:

Issue C.C. within three days.

(B/O)

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